



**NOT FOR PUBLICATION**

Defendant's submission leaves room for doubt. In its Notice of Motion, Defendant writes, "in support of this motion, Alterra will rely upon the Brief in support thereof." ECF No. 26. It relies *only* on this brief. Although the brief alleges violations of discovery and scheduling orders, Defendant presents no admissible evidence in support—no exhibits, affidavits, declarations or certifications under penalty of perjury. Absent evidence in admissible form, there can be no "clear record of delay or contumacious conduct." *See* Fed. R. Evid. 603; Fed. R. Evid. 901. The Court cannot dismiss an action under Rule 41(b) without an evidentiary basis.

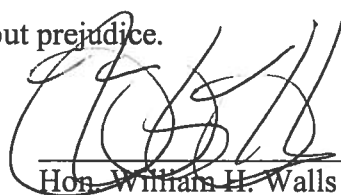
Local Rules also prevent the Court from imposing sanctions under Rules 16 or 37 without an accompanying affidavit or other document complying with 28 U.S.C. § 1746. L. Civ. R. 16.1(g)(1); L. Civ. R. 37.1(b)(1). Absent such a document, the Court cannot impose sanctions under those rules here.

**ORDER**

Defendant's motion, ECF No. 26, is denied without prejudice.

DATE:

12 May 2015



Hon. William H. Walls

Senior United States District Judge